UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

FORD MOTOR COMPANY,

Respondent,

and **Cases 07–CA–198075**

LOCAL 324, INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE), AFL–CIO,

Charging Party,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO, and its LOCAL 245.

Intervenors.[1]

Counsel:

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of Detroit, Michigan, for the Interested Party.

DECISION

INTRODUCTION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. This is a successorship case involving a small group of skilled maintenance employees represented by the International Union of Operating Engineers Local 324 (IUOE Local 324). These maintenance employees worked for a

[1]On my own motion, I have amended the caption to reflect that at the trial in this matter the UAW and its Local 245 moved for and were granted leave to intervene.

succession of contractors at a wind tunnel facility in Allen Park, Michigan, called the drivability testing facility (DTF), where customers, primarily Ford Motor Company (Ford), tested vehicles.

In approximately 2014, Ford (or its subsidiary Ford Land) acquired ownership of the DTF. On April 24, 2017, Ford "insourced" the maintenance at the DTF operation, terminating the use of the predecessor employer to perform the DTF's skilled maintenance work. Ford rehired four of the five incumbent skilled maintenance employees and also transferred in two additional Ford skilled workers from a United Auto Workers (UAW) skilled trades local, UAW Local 245. UAW Local 245 performs skilled maintenance throughout Ford's Research & Engineering facilities, composed of approximately 58 buildings spread across four to five miles of Allen Park, Melvindale, Dearborn, and Dearborn Heights, Michigan. Rejecting IUOE Local 324's demand for recognition to continue as the representative of the DTF skilled maintenance employees, Ford recognized UAW Local 245 as the DTF maintenance employees' bargaining representative.

Upon Ford's assumption of the maintenance operation, the six employees assigned to the DTF—four of whom had been employed by the predecessor—immediately began, without hiatus in operations, performing the same skilled maintenance for Ford that the predecessor's employees had performed, using the same tools, with the same building supervisors, and, of course, working for the same customer, Ford. Indeed, the "business as usual" approach Ford brought to its new maintenance unit was agreed to by Ford and the UAW, at least until some later date when Ford could train and familiarize additional Local 245 tradesmen with the DTF. As of the time of the hearing, more than six months after Ford had assumed the operation, the employee complement remained the initial six individuals. A Ford manager and UAW representative testified that ultimately Ford intends to assign ten, rather than six, skilled tradesmen to the DTF, and that after sufficient outside Local 245 members have been trained at the DTF, outside Local 245 workers may use their shift seniority agreements with Ford to bump into the DTF maintenance positions.

The government and the IUOE allege that Ford was a successor employer and that Ford violated Section 8(a)(5) of the Act by refusing to recognize Local 324 as the employees' bargaining representative. As discussed herein, I agree. Under settled precedent, when Ford commenced normal operations of the DTF maintenance work with what was—at the least—a substantial and representative complement of employees in a longstanding and still appropriate unit, a majority of whom had worked for the predecessor, there could have been no lawful result other than Ford agreeing to the IUOE Local 324's demand for recognition and bargaining.

STATEMENT OF THE CASE

On May 3, 2017, IUOE Local 324 filed an unfair labor practice charge alleging violations of the Act by Ford, docketed by Region 7 of the National Labor Relations Board (Board) as Case 07–CA–198075. Based on an investigation into this charge, on July 26, 2017, the Board's General Counsel, by the Regional Director for Region 7 of the Board, issued a complaint and notice of hearing in this case. Ford filed an answer denying all violations on August 8, 2017.

A trial in this matter was conducted on November 6–8, 2017, in Detroit, Michigan. At the commencement of the hearing, the International Union UAW and its Local 245 moved, without objection, to intervene. That motion was granted. The UAW and its Local were permitted to and

did participate fully as parties in the hearing. (Hereinafter the Intervenors are referred to collectively in the singular as the Intervenor.)[2]

Counsel for the General Counsel, for the Respondent, for the Charging Party, and for the Intervenor filed posttrial briefs in support of their positions on December 22, 2017.

On the entire record, I make the following findings, conclusions of law, and recommendations.

JURISDICTION

At all material times, Ford has been a corporation with an office and facility in Allen Park, Michigan, and has been engaged in the manufacture, nonretail sale, and distribution of automobiles and other automotive products. In conducting its operations during the calendar year ending December 31, 2016, Ford sold and shipped from its Allen Park, Michigan facility goods valued in excess of $50,000 directly to points outside the state of Michigan. At all material times, Ford has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times, IUOE Local 324 has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

UNFAIR LABOR PRACTICES

The IUOE Local 324's representation of the maintenance employees at the DTF

The Drivability Test Facility (DTF) is a stand-alone three-level approximately 200,000 square-foot building located in Allen Park, Michigan, and used to conduct wind tunnel tests on vehicles. In 1999, Ford contracted with a company Sverdrup (a subsidiary of Jacobs Engineering) to construct and operate the DTF wind tunnels. The DTF opened for operation in about 2000, and was operated by Jacobs Engineering or one of its subsidiaries. While built and operated by Jacobs Engineering, Ford was always the primary customer for the DTF, and likely the exclusive customer since 2010, using the facility to test its vehicles.

From its opening in 2000 to April 24, 2017, when Ford assumed control of the maintenance at the facility, a series of employers (such as Siemens, and then EMCOR) performed the maintenance for the DTF building, including, from approximately 2006 to 2017, a Jacobs subsidiary (first Jacobs Constructors, followed by Jacobs Industrial Services).

[2]During the first day of the hearing, the General Counsel moved to amend para. 9 of the complaint to add general maintenance work to the description of the alleged appropriate bargaining unit. The UAW and Ford objected, but I granted the motion. The General Counsel represented that the change was an "administ[rative] error" and "that no substantive allegations are changing." I accept and agree with that representation. I note that the amendment brought the description of the alleged appropriate unit into substantial conformity with the predecessor's unit description by including general maintenance work in the unit. (The full description of the unit alleged appropriate by the General Counsel is set forth in the Conclusions of Law, and the Order, infra.) That the historic unit remains appropriate in this successorship situation is the central contention of the General Counsel's theory of the case. Neither the UAW nor Ford claim, nor reasonably could claim, that they did not know this in advance of trial. Notwithstanding their objections, neither the UAW nor Ford was prejudiced in any way by the amendment. The unit issue was fully and appropriately litigated.

Throughout this time, the maintenance employees who worked at the DTF were represented by a local union of the International Union of Operating Engineers. While there was some variation during this 17-year period in the unit descriptions set forth in the successive collective-bargaining agreements, the units were all single-site units consisting of the appropriate job classifications working at the facility's street address: 8000 Enterprise Drive, Allen Park, Michigan.

Until 2009, the collective-bargaining representative of these DTF skilled maintenance employees was Local 547. In 2009, Local 547 merged into Local 324 and thereafter Local 324 became the collective-bargaining representative, entering into a series of collective-bargaining agreements with the employer, Jacobs Industrial Services, in 2010, 2013, and 2016. The final collective-bargaining agreement between Jacobs and IUOE Local 324 was intended effective from July 1, 2016 through June 30, 2019. That contract stated (Article 1 Section 1) that:

> The Company recognizes the Union as the sole and exclusive bargaining agent for all Operating Engineers and Electricians, employed by the Company at Jacobs Industrial Services, 8000 Enterprise Drive, Allen Park, Michigan 48101, in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed in the said location and in the performance of general building maintenance.[3]

The unit represented by IUOE Local 324 consisted of as many as eight but most recently five employees. Just prior to the assumption of operations by Ford on April 24, 2017, the unit consisted of three plant operators and two electricians, covering a 24-hour, three shift, five-day-a-week operation. A fourth plant operator had been terminated for cause in late December 2016 and he was not replaced by Jacobs. The five working through April 24, 2017, were Jesse Miller (lead plant operator and maintenance), John Kurzawa (master electrician), Jason Ricks (maintenance and plant operator), Kristian Peters (maintenance and plant operator), and Carl Wynn (electrician). Miller and Kurzawa worked the day shift. Peters and Ricks (in the months just before April 24, 2017) worked midnight shift. Wynn worked the afternoon shift.

These five employees composed the maintenance department at DTF and performed preventative and other needed maintenance work necessary for day-to-day operations. This included maintaining the test equipment, the refrigeration plant, the cooling tower, the electrical plant, the hvac, the dynamometers, and general maintenance work that could range from drywall repair to adjusting room temperatures, even painting and plumbing. The electricians assisted the operators as needed, and vice-a-versa. An immediate supervisor (Ron Sirhan), a maintenance supervisor (Jason Maggard), and a scheduler/planner (Dave Knott), each of whom worked for Jacobs Engineering, also assisted in small ways with some bargaining unit work.

These unit employees were the sole maintenance employees regularly assigned to the building. Skilled trades work outside the stationary engineer or electrician work was often performed by outside contractors brought in to do particular jobs. According to information

[3]Article 1 of the 2016 Agreement also contained a Section 2 which stated:

> General building maintenance includes: test operational support and troubleshooting, preventive maintenance activities, and repairs of existing building components. Excluded work is: custodial maintenance, grounds keeping, operations maintenance, safety compliance inspections, and major construction.

request responses provided by Ford to the UAW in the summer of 2016, Ford was paying more for outside contractors to perform maintenance work than it was for Jacobs' unit employees to perform maintenance work.[4] With the exception of excluded work (see fn. 3, supra) the unit employees worked on and were responsible for the entire building and premises, including lighting in the parking lot. They did not work at other locations.

Before April 24, 2017, the unit employees came to work each weekday, covering three shifts. They parked in unassigned spaces in a parking lot on the north side of the building. They took breaks in the break room or maintenance office at the south end of the building in the main office. They ate lunch in the break room or the maintenance office. They dressed in the locker room and had assigned personal lockers just outside the locker room. Sirhan managed the employees. Employees reported payroll problems to Sirhan, and to Maggard if Sirhan was not available. When they arrived at work they would review any issues that were reported from the previous shift, often having a "handoff" conversation with the employee for whom they were taking over. On days there was usually a walkthrough of the plant. When rounding, they would check temperature and pressures, make sure all machinery was in working order and perform preventative maintenance. Work orders came through Scheduler/Planner Knott using the C-works system. Additional work requests might come from Knott or other Jacobs Engineering supervisors. Operators might also receive requests for more general maintenance work, such as a wind tunnel operator asking for adjustment of the temperature in a room, or to attend to a door that needed to be fixed, or to patch drywall or ceiling tile. Even before April 24, 2017, tools were provided by Ford to the employees.

On February 2, 2017, Jacobs informed Local 324 that Ford had notified Jacobs that Jacobs' maintenance service contract would be ending. Jacobs' letter to Local 324 indicated that Ron Sirhan would begin communicating with employees about the transition process, and that it was expected that Ford Land (the Ford-owned entity that operates commercial real estate) would speak to the employees and that "[t]hey will be told their jobs are secure and would have first right of refusal to stay in their current position and switch employers." The letter also noted that the "UAW will be coming on to shadow the craft to start the process to classify their jobs." One employee, electrician John Kurzawa, testified that he was alerted by the Local 324 business agent over the weekend, and upon his return to work, he spoke with Ford onsite DTF manager, Jim Hompstead, who told Kurzawa and coworker Jesse Miller "what was going on" and "that the UAW was taking over the contract." Hompstead indicated that "if we wanted to stay there we'd have positions."

UAW Local 245

The UAW local "taking over the contract" was Local 245. As the local's chairman, Paul Vergari, testified, Local 245 is a broad-based mostly skilled trades local union that "represents everything that has to do with the research and development of Ford products." Essentially Local 245 represents the skilled maintenance employees working in or servicing Ford's product development operations—which is an agglomeration of Ford-owned corporate buildings and commercial buildings owned by Ford's subsidiary Ford Land and referred to as the Research and Engineering (R&E) center. The R&E center is composed of approximately 58 buildings spread throughout Dearborn, Dearborn Heights, Melvindale, and Allen Park, Michigan.

[4] I recognize that Ford's responses to UAW information requests, offered into evidence by the UAW, are hearsay, and not admissible for the truth of the matters asserted therein. However, there is no dispute that a significant amount of maintenance work at the DTF was performed by outside contractors.

Since 1982, the UAW Local 245's representation has grown from around 40 to 58 buildings that are considered by Ford to be part of the Ford R&E center. When a new building was built, Local 245 was granted recognition of the skilled trades employees working in or assigned to the building. In the case of commercial buildings managed by Ford Land that had Ford and non-Ford tenants, Local 245 would provide the skilled maintenance only when such buildings were 50 percent or more occupied by Ford tenants.[5]

Historically, UAW Local 245's representation included the maintenance of Ford wind tunnels 1 and 2, built in the 1950s or early 1960s. These wind tunnels closed in 2004 after the DTF was built and Ford shifted its testing to the DTF wind tunnels, which are referred to by Ford as wind tunnels 6, 7, and 8. The UAW also maintains Ford wind tunnels 3, 4, and 5, which are two to three miles away from the DTF. From 2000 to 2017, the IUOE maintained the wind tunnels of DTF, while the UAW maintained wind tunnels 3, 4, and 5.

Out of 800 Local 245 members, approximately 700 are in skilled trades, with maintenance trades, such as carpenters, millwrights, stationary steam engineers (SSEs), electricians, plumbers, truck mechanics, and refrigeration maintenance and installation employees accounting for approximately 526 of the 700.

Of the 58 buildings serviced by Local 245, approximately 28 have Local 245 members assigned to perform maintenance at the building as their regular work assignment. These building-assigned members compose approximately 55 percent of the Local's skilled maintenance members. The remainder are "mobile" skilled maintenance employees who travel to different buildings to perform work, sometimes traveling to multiple locations in a day. When traveling to the various sites, these mobile tradesmen will have interaction with a variety of customers and building-assigned maintenance employees.

Assignments are made by Ford management and can change to meet the maintenance and other demands of Ford throughout these buildings. UAW Representative Vergari estimated that some employees are reassigned four or five times a year, but also estimated that on average there was a 20-25 percent chance that an individual tradesmen would find himself reassigned during a given year.

While employees cannot control their assignments, they can use their seniority to change shifts, effectively allowing employees willing to change shifts to bump a lower seniority employee out of a current assignment throughout the R&E center buildings.

Overtime opportunities are provided by management and "equalized" across job classifications and across Ford divisions within R&E. Employees can decline overtime but their overtime opportunities can be anywhere in the range of buildings in the R&E buildings represented by Local 245. Every weekend there are Local members working overtime at facilities other than their "home" or normally-assigned building during the week.

[5] I note that there are numerous buildings—more than 30—within the geographic 4-mile radius containing the R&E center facilities that are Ford Land owned, but have their maintenance performed by other local unions, including IUOE Local 324. This includes buildings where Ford tests autonomous vehicles.

Interview and hiring of Jacobs maintenance employees by Ford

According to UAW Local 245 Representative Vergari, "Ford management told me that the customer [i.e., Ford product development] would feel more comfortable if they could hire some of the Jacobs employees" to work at DTF in the maintenance positions. Vergari's position was that the UAW was fine with that, as long as the agreements between UAW and Ford for hiring skilled trades was followed. According to Vergari, this entailed "check[ing] every single Ford facility in North America represented by the UAW to see if there's any displaced or laid off skilled trades" employees. Vergari testified that this process was followed, no current Local 245 members were found, and the authorization to hire was granted near the end of January 2017.[6]

The Jacobs/IUOE Local 324 employees were interviewed in March by Ford officials, particularly Superintendent Eric Gerling, and Tom Ferguson. A third unidentified Ford official was present for at least some of the interviews. The interviews took place on the second floor of a Ford building in Dearborn.

After the interviews, the employees were told they could—or were instructed to, the testimony varies—go downstairs and talk with UAW Local 245 Representative Paul Vergari in his office. Either the Ford officials or Vergari, who is chairman of Local 245's Research/Engineering unit, informed the prospective employees that if they accepted a job with Ford at the DTF it would be under Local 245 representation and with terms and conditions set by the contract covering Local 245. This meant a loss of pay for some (but not all) of the employees, and a loss of their existing pension plan. They were told that their seniority would not transfer from the Jacobs employment and they would start new in terms of seniority.

Vergari testified that he told them that "three times a year you're subject to a shift bump and it's by seniority." However, the record is clear that the employees did not fully understand the bumping and seniority rules—they knew that they lost their seniority when they started with Ford, with whatever implications that might bring for their status. Moreover, I credit Peters testimony that he was told by Vergari when they met after his interview that the employees at DTF would have "1 year of site security," which Peters understood to mean that "we would not be subject to being bumped out of that building for a year." This was also Miller's understanding.

Electrician John Kurzawa, discussed the compensation with Vergari, and as he was leaving said to Vergari that he "found it kind of odd that two affiliated unions[,] that one would try and do this to another one." Vergari answered, "well, it's not like we're trying to do work over at Best Buy or something like that."

About a week after the interviews, on or about March 17, four of the five incumbent DTF maintenance employees received conditional offers of employment from Ford—subject to background/drug/physical tests. The offers stated the starting wage rate and their job classification as a stationary steam engineer (SSE), in the case of the employees formerly classified as operating engineers, or as an electrician for the employees already classified as an electrician under the IUOE. Kristian Peters and Jesse Miller were hired as SSE's. John Kurzawa and Carl Wynn were hired as electricians. The four accepted employment and began work for Ford on April 24, 2017.

[6] I note that no Ford official endorsed (or rebutted) Vergari's view of the contractually-required prerequisites to hiring.

The IUOE's request for recognition and bargaining; Ford's response

On April 13, 2017, Local 324 business agent, Jim Arini, sent a letter to Ford Land representative, Cheryl Chadwick, requesting recognition and a meeting to negotiate terms and conditions of employment. Arini's letter stated:

> International Union of Operating Engineers Local 324 represents a majority of employees employed by your company in the following appropriate unit:
>
> All employees employed at 8000 Enterprise Drive, Allen Park, Michigan in the Operation, mechanical maintenance and repair of all refrigeration, heating, and air-conditioning machinery installed in said location and in the performance of general building maintenance which includes test operational support and troubleshooting, preventative maintenance activities, and repairs of existing building components, but excluding custodial maintenance, grounds keeping, operations maintenance, safety compliance, inspections and major construction.
>
> The Union requests that you recognize the Union as the collective-bargaining representative for these employees and requests a meeting with the appropriate representatives to negotiate wages, benefits and working conditions for this group. The Union's request is based on your legal obligation to bargain as a successor employer based on the United States Supreme Court ruling in *NLRB v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972)
>
> Please contact me as soon as possible to schedule a meeting.

Chadwick responded by letter dated April 24, denying recognition to the IUOE, and stating that "[a]ll Ford Motor Company hourly employees employed at the Allen Park location are represented by the United Auto Workers (UAW)."

Ford takes over the maintenance support of DTF; UAW Local 245 takes over representation

As noted, four former Jacobs DTF employees began working at DTF for Ford, without hiatus, on April 24. They were joined by two Ford employees, George Dusaj and Carl Smith, who were transferred into DTF from other facilities and assigned to DTF as SSEs. Thus, as of April 24, the Ford DTF-assigned employee complement was composed of an electrician (Kurzawa) and an SSE (Miller) on day shift; an electrician (Wynn) and SSE (Dusaj) on the evening shift; and two SSEs (Smith and Peters) on midnight shift. This was the same staffing and job distribution that existed under Jacobs until an evening shift operating engineer was terminated for cause in late December 2016, after which time Jacobs operated without an SSE on the evening shift.

Just after the transition, the new Ford employees attended an orientation where they received copies of the Ford-UAW bargaining agreement, learned about the overtime equalization policy and how the shift preference could work to remove someone from their current assignment.

Three of the four DTF maintenance employees who had formerly worked for Jacobs and had been rehired by Ford testified at the hearing. Each testified credibly that, with the exception of loss of pay (for some of them), pension, and seniority, there was no change to their work. As Peters testified, after the transition it was "the same work." Miller agreed that "Nothing's changed," and testified that "[w]orking conditions as far as that are the same; I mean it's identical to what it was." Kurzawa testified that "my electrical work is all the same," "[n]othing's changed."

After April 24, the rehired employees reported to work in the same facility, assigned to the same department—maintenance—worked the same shifts, parked their cars in the same lot next to the facility, used the same locker rooms, lockers and break areas. They used the same tools, and performed the same work in the same manner. They continued to pick up their work orders from the same folders prepared in the same way by the scheduler/planner Dave Knott, who continued in his role. Their immediate supervisor continued to be Ron Sirhan, until Sirhan left for another Jacobs facility in August, at which time the employees reported to Jason Maggard, who continued as maintenance supervisor both before and after the transition and eventually assumed Sirhan's duties when Sirhan left. The work orders were generated from the same work order system—C-works—that had been used under Jacobs.[7] The rehired employees continued to perform walkthroughs to monitor equipment and remained responsible for all areas of the three-story building. They continued to work on maintaining and repairing the building's equipment, and they continued assisting each other as they had before the transition.[8]

The continuity between the predecessor's work process and the current work process was openly discussed and encouraged by Ford officials. Ford's Site Superintendent Eric Gerling told SSE Miller and Electrician Kurzawa that their duties would remain the same after transition to Ford as they had before the transition. Miller described talking to Gerling in his office, in late spring or early summer 2017, "right after we hired in." In that discussion Miller and Kurzawa expressed concern about how they would perform work—they knew that "the UAW's got a little bit different work rules than we did," and "[w]e didn't want to step on anybody's toes or anything like that." However, Gerling, seconded by Sirhan, told them "It's business as usual; just do your job just like you always have." In fact, Gerling told Miller that "they wanted other UAW members to start working more like we worked."

Kurzawa recalled that he and Miller were meeting with Gerling because of concerns they had that one of the new transferred UAW members might file a grievance against them—"we just didn't want to create a big mess . . . as far as work, you know, guidelines and stuff like that." Kurzawa testified that he and Miller were told, "we were to do things business as usual, that they wanted things to operate more like us over at the R&E center and they don't want us operating like the R&E center." Kurzawa added, "I was told continue on working the way I was prior to."

Peters, when instructed, on or about June 22, to use a Jacobs engineering employee as his spotter, expressed concern that at orientation, a UAW representative had told employees that "I (as an SSE) should not even spot for an electrician. If we needed support, he told us that we should call our UAW leads and they would arrange support." (Original emphasis.) Sirhan, however, responded with the following:

> Regardless of what you were told by other UAW members, DTF is operating off of what I was told and the signed "Launch Agreement" between Ford and the UAW. We are conducting business as usual (for the first year). This is a job task that you

[7]There was testimony that the DTF will be transitioning to a Ford work order system but that had not happened as of the hearing.

[8]Kurzawa, who is an electrician, testified that since the transition he no longer covers weekend overtime shifts for the engineers, and thus, spends less of his overall time watching the boiler or performing other engineer work. Under Jacobs, Kurzawa often covered 12-hour overtime weekend shifts for the engineers. After the transition this was not required. On his regular shift, Kurzawa continues to assist coworker Miller with engineering duties when Miller requires assistance.

> have performed in the past and are more than qualified to do. Dave [Knott] is the Planner /Scheduler and is issuing the work orders per this plan.

In other instances, and as an ongoing matter since the transition, Peters described instances where he was instructed by Sirhan to continue to use Jacobs "specs" on power controls and lockout when they could not comply with the Ford spec—"we were told to operate under our existing policy."

Miller testified that the UAW had different work rules than the IUOE and that following the UAW rules would restrict him from doing some of the "non-core" work—such as plumbing and painting—that he was used to doing. Miller testified that UAW Committeemen Kirk Brayman and Jeff Shotwell told him that during the launch year there would be flexibility in following UAW Local 245 work rules but that after the year there would not be.

In practice, employees understood that there was "a fence" around DTF for a one-year period. Employees' understanding of this phrase was vague, but Kurzawa understood that to be what Gerling meant when he talked about it being "business as usual" for a transition period at DTF. Kurzawa understood that the fence would permit the DTF employees to stay at DTF for the year without risk of being bumped out of their shift by outside UAW Local 245 Ford employees.[9]

It is important to note that the emphasis on keeping working conditions the same as before the transition that prevailed at the DTF was not a fortuity or a whim of the DTF supervisors. Ford negotiated with the UAW to ensure that the DTF's work efficiencies and cost competiveness matched that of the operation under Jacobs. Ford conditioned recognizing the UAW as the bargaining representative on the agreement that Ford would not have to operate the DTF on the model and with the work rules in effect at other Ford-UAW Local 245 facilities.

The UAW became aware of what it believed to be Ford's ownership of the DTF wind tunnel as far back as December 2014, when UAW officials noticed a Ford Land sign had been mounted outside the DTF facility. As UAW Local 245 Representative Vergari explained, the Local "developed a strategy, we had to bring this into our unit." The matter was raised by the UAW in collective-bargaining negotiations with Ford that began in June 2015. The UAW successfully obtained a letter of understanding from Ford, dated October 22, 2015, that provided

> During the course of 2015 Local Negotiations, the parties discussed issues concerning skilled work assignments at the Drivability Test Facility. The Local Union expressed its desire to have UAW Local 245 Skilled Trades perform maintenance work at the facility. *The Company emphasized, that in order to utilize UAW Skilled Trades employees at this facility, it must be cost competitive and efficient in relation to the current service contract.* Taking into consideration the concerns of both parties, it is agreed that within ninety (90) days after ratification of the Local Agreement, the parties will meet, discuss and agree to the necessary actions to perform skilled trades work at this facility that is as efficient and cost competitive *as the current operating model*. (Emphasis added.)

[9]Neither Gerling, Sirhan, Brayman, Shotwell, nor Knott testified. All of the employees' testimony about being told that they were to operate in the same manner as before the transition, that it is "business as usual," that there would be flexibility regarding UAW rules, and all such related testimony, was unrebutted and is credited.

On April 24, 2017, the day that Ford began maintenance operations, Ford and Local 245 entered into a "Launch Agreement" that would last one year, unless terminated earlier by Ford.

The Launch Agreement recited the parties' commitment to working together to identify and implement efficient work practices and, summarizing the October 22, 2015 Letter of Understanding, emphasized that "UAW Local 245 Skilled Trades employees *must be cost competitive and efficient in relation to the current service contract.*" (Emphasis added.) The Launch Agreement letter provided for "innovative approaches" in "transitioning skilled trade work from the DTF current service contract to UAW Local 245," including a one-year "Launch Agreement" that included "[i]mplementation of a 'Skilled Trade Coordinator," "[d]etailed tracking of metrics and performance at DTF *to measure and ensure that the new operating model continues to deliver services that are as cost-competitive and efficient as the current operating model,*" (emphasis added) joint weekly and quarterly business reviews aimed "toward ensuring competiveness and efficiency of the operations," and the,

> [c]reation of a DTF-specific 'Versatility Matrix' to identify specific equipment and tasks that require training for skills not already possessed by the UAW Local 245. . . . This will ensure that only qualified employees will be assigned to perform work at DTF, including the assignment of overtime work. The exercising shift preference during the one-year launch will also be dependent on the Versatility Matrix."

The launch letter provided that the Launch Agreement would include provision providing for retention of the Jacobs supervisors:

> Purchased service salaried staff will continue to perform their current work and provide direction to the UAW Skilled Trade employees.

The letter provided that, "it is imperative that all employees assigned to this facility work together in order to maintain cost competiveness and gain efficiencies in the spirit of continuous improvement."

The Launch Agreement further provided that it could be terminated on 90 days-notice by Ford "[i]n the event that the terms of this agreement are not met, as it relates to maintaining or improving the cost competitiveness and efficiency *as established under the current operating model."* (emphasis added).

Since the transition there are weekly meetings to discuss operational issues. Miller acts as a project coordinator and attends weekly meetings, along with Kurzawa and management. At these meetings the transition to Ford is discussed. These meetings are attended by Sirhan (and later Maggard), Knott, Gerling and other Ford officials and UAW representatives. At the meeting there is discussion of compliance with the terms of the Launch Agreement and issues such as bringing the DTF up to Ford safety standards.

Throughout the period after the transition, no additional or new skilled trades employees have been regularly assigned to work at the DTF. The six DTF employees perform their daily assigned work only at the DTF and have not performed regular hourly work outside of the DTF.[10] The use of outside contractors coming in to DTF to perform work has continued. However, now

[10]One employee, George Dusaj, who transferred into DTW upon the transition, testified that he has worked overtime "probably like two or three times" in other buildings since the transition. The others have not. However, the DTF employees are working significant overtime at the DTF.

some of the work that in the past would have been done by third-party contractors, has been performed by UAW Local 245 skilled trades Ford employees brought in to complete specific assignments at the DTF.

Ford Land Maintenance and Operations Manager Joe Vicari testified at the hearing that in December 2017—a few weeks after the November 2017 hearing—Ford planned to move to a 7-day operating schedule for skilled trade maintenance support at the DTF and planned to employ 10 employees there by the end of 2017. Vicari and Vergari testified that this anticipation of ultimately ending up with ten DTF skilled maintenance employees working at the DTF—instead of the six Ford began with—was determined prior to the transition. Vicari testified that he derived the figure based on his observation of the DTF in 2016 and he put it in the 2017 operating budget that he began preparing in September 2016. The budget called for ten employees including millwrights and plumbers in addition to the steam engineers and electricians. However, as Vergari testified, as of November 2017, it still had not been determined whether there was enough work to permanently station a millwright or plumber at the DTF. Vicari also testified at the hearing that "the strategy right now is to have the six skilled trades that are assigned there. They're to maintain operations and train the required work force." Vergari testified that Ford did not begin at DTF with ten employees because the efforts "centered around getting a critical mass of people trained." Between the need for training, and the extensive overtime being worked around the R&E center, Vergari testified that "to staff it [DTF] at 10 heads would be difficult to do," although he, like Vicari, anticipated—in testimony given in November 2017—that it would occur by the end of the year.

Vergari asserted, under leading questioning (Tr. 398) that the "majority" of work that was formerly contracted out by Jacobs is now being performed "[b]y mobile members," but I do not credit that assertion, which is unsupported by any documentation or by the weight of the record evidence as a whole—particularly for the early months after the transition. The record shows two emergency safety issues—a fire hydrant water main break, and a door that fell—for which outside Local 245 members were brought in. In mid-October, two Local 245 employees from outside the DTF began work on a combustion safety survey put into effect as a result of a past explosion at Ford's Rouge plant. By all evidence, this work has been episodic, though not set out in detail in the record. Vergari testified that in total there has been "at least a dozen" outside employees brought in for "some period of time" but less than full-time since the transition. Ford Land's Maintenance and Operations Manager Vicari testified but provided no evidence of any substance or detail showing extensive use of outside Local 245 tradesmen at the DTF at any time since the transfer.[11]

[11]Vicari testified that even before the hiring of the Jacobs employees on April 24, he (and Ford) anticipated that the workload at the DTF could support 10 full-time maintenance employees, if outside contractors were reduced and if the salaried support staff were less "hands on." Vicari testified that Local 245's "mobile work force" had been sent into the DTF "many times" since April 24. However, when asked by Ford counsel whether the mobile work force was how the work of the projected 10 employees was covered, Vicari demurred, answering that

> The strategy right now is to have the six skilled trades that are assigned there. They're to maintain operations and train the required work force. We need to get a work force trained so we can increase the number.

Beginning in August, and at various times thereafter, a total of approximately 13 SSE's and no more than 9 electricians who were members of Local 245 working in other locations for Ford were sent to the DTF for "training" or "system familiarity." The DTF employees would show the visiting employee the machines and familiarize them with the building and its operation. Visiting employees engaged in this training for, generally, three to five days, although some for longer, and then returned to their regular assignment outside of the DTF.

Once "trained" these outside Local 245 members were eligible for overtime assignments at the DTF. The record shows one "outside" Local 245 employee, James Muhammad, worked an eight-hour overtime shift on October 22. He was the only employee from outside the DTF that had worked a DTF overtime shift that DTF Local 245 SSE George Dusaj was able to identify. Another, Gerald Maynard worked one hour at the DTF in late July or early August, but it was not overtime, but more of an emergency issue, after the DTF lost power to a circuit and Maynard came over to find the panel and reset the breaker. There is no other first-hand evidence of outside Local 245 employees working overtime at the DTF. Rather, the evidence is that the six DTF employees were working most of the overtime available at DTF. As Vergari explained, "the six people that are working over at DTF have been working in what we would consider traditionally a large amount of overtime." Vicari testified that "excessive" overtime was being worked at the DTF, but did not suggest (and no evidence supports an inference) that it was being done by "outside" Local 245 employees coming in for overtime. Rather, the evidence is that "discussions centered around getting a critical mass of people trained" to work at the DTF. As discussed, this process began in August 2017 and no more than 23 tradesmen out of 526 Local 245 skilled maintenance members had been trained by the time of the hearing. Vicari's testimony at the hearing was that until sufficient Local 245 members are trained, the "six skilled trades that are assigned there [to the DTF]" are "to maintain operations and train the required work force."

Analysis

The complaint alleges that Ford's failure and refusal to recognize and bargain with the IUOE Local 324 violates Section 8(a)(5) of the Act, and, derivatively, Section 8(a)(1).[12] The complaint further alleges that Ford's recognition of the UAW and application of the UAW-Ford agreement to the DTF skilled maintenance unit violated Section 8(a)(5), and, derivatively, Section 8(a)(1) of the Act.

I. The alleged violation against Ford for failing and refusing to recognize and bargain with IUOE Local 324

The General Counsel contends that Ford is a successor employer to Jacobs with an obligation, since April 24, 2017, when it assumed the DTF maintenance operations, to recognize and bargain with the IUOE Local 324 as the DTF skilled maintenance employees' collective-bargaining representative. Ford and the UAW reject these claims with an assortment of arguments, including that Ford is not a successor employer, that the historic DTF maintenance unit is not appropriate, that Ford has yet to hire a full or representative complement of DTF employees, and finally, that Ford and the UAW have chosen a new union for the DTF maintenance employees—the UAW—and that their choice is "lawfully guaranteed to the UAW under the Ford-UAW collective-bargaining agreements." (I. Br. at 28.)

[12] An employer's violation of Sec. 8(a)(5) of the Act is also a derivative violation of Sec. 8(a)(1) of the Act. *ABF Freight System*, 325 NLRB 546 fn. 3 (1998); *Tennessee Coach Co.*, 115 NLRB 677, 679 (1956), enfd. 237 F.2d 907 (6th Cir. 1956).

A successor employer and its duty to bargain

"[F]rom the earliest days of the Act, the Board has sought to foster industrial peace and stability in collective-bargaining relationships, as well as employee free choice, by presuming that an incumbent union retains its majority status." *Levitz Furniture Co. of the Pacific*, 333 NLRB 717, 720 (2001). In furtherance of these policies, the Board's successorship doctrine extends this presumption of majority support for an incumbent union to the sale situation. The Board's successorship doctrine is "founded on the premise that, where a bargaining representative has been selected by employees, a continuing obligation to deal with that representative is not subject to defeasance solely on grounds that ownership of the employing entity has changed." *Hudson River Aggregates, Inc.*, 246 NLRB 192, 197 (1979), enfd. 639 F.2d 865 (2d Cir. 1981), citing *NLRB v. Burns Security Services*, 406 U.S. 272, 279 (1972). In *Fall River Dyeing Corp. v. NLRB*, 482 U.S. 27 (1987), the Supreme Court agreed with the Board that a union's presumption of majority support

> continues despite the change in employers. And the new employer has an obligation to bargain with that union so long as the new employer is in fact a successor of the old employer and the majority of its employees were employed by its predecessor.

482 U.S. at 41; *NLRB v. Burns Security Services*, 406 U.S. 272 (1972).

In *Fall River Dyeing*, the Supreme Court recognized that the rationale for the presumption of an incumbent union's majority support is "particularly pertinent in the successorship situation":

> During a transition between employers, a union is in a peculiarly vulnerable position. It has no formal and established bargaining relationship with the new employer, is uncertain about the new employer's plans, and cannot be sure if or when the new employer must bargain with it. While being concerned with the future of its members with the new employer, the union also must protect whatever rights still exist for its members under the collective-bargaining agreement with the predecessor employer. Accordingly, during this unsettling transition period, the union needs the presumptions of majority status to which it is entitled to safeguard its members' rights and to develop a relationship with the successor.
>
> The position of the employees also supports the application of the presumptions in the successorship situation. If the employees find themselves in a new enterprise that substantially resembles the old, but without their chosen bargaining representative, they may well feel that their choice of a union is subject to the vagaries of an enterprise's transformation. This feeling is not conducive to industrial peace. In addition, after being hired by a new company following a layoff from the old, employees initially will be concerned primarily with maintaining their new jobs. In fact, they might be inclined to shun support for their former union, especially if they believe that such support will jeopardize their jobs with the successor or if they are inclined to blame the union for their layoff and problems associated with it. Without the presumptions of majority support and with the wide variety of corporate transformations possible, an employer could use a successor enterprise as a way of getting rid of a labor contract and of exploiting the employees' hesitant attitude towards the union to eliminate its continuing presence.

Fall River Dyeing, 482 U.S. at 41 (footnote omitted).

In addition to recognizing the importance of the presumption of a union's majority support for the union and the employees during this transition period, the Supreme Court also stressed that the Act's successorship doctrine "safeguard[s] the rightful prerogative of owners independently to rearrange their businesses." *Fall River Dyeing*, supra at 40 (internal quotations omitted). Referencing its seminal successorship decision in *NLRB v. Burns*, supra, the Court in *Fall River Dyeing* noted that "the successor is under no obligation to hire the employees of its predecessor, subject, of course, to the restriction that it not discriminate against union employees in hiring." The result is that

> to a substantial extent the applicability of *Burns* rests in the hands of the successor. If the new employer makes a conscious decision to maintain generally the same business and to hire a majority of its employees from the predecessor, then the bargaining obligation of § 8(a)(5) is activated. This makes sense when one considers that the employer intends to take advantage of the trained work force of its predecessor.

Fall River Dyeing, 482 U.S. at 40–41 (court's emphasis; footnote and citations omitted).

Accordingly, in this case, Ford's obligation to recognize and bargain with IUOE Local 324 turns on whether a majority of its employees in an appropriate bargaining unit were employed by the predecessor, and if there exists substantial continuity between the enterprises. *Specialty Hospital of Washington-Hadley, LLC*, 357 NLRB 814, 815 (2011); *Van Lear Equipment*, 336 NLRB 1059, 1063 (2001).

Substantial Continuity

With regard to substantial continuity, "the focus is on whether there is a 'substantial continuity' between the enterprises." *Fall River Dyeing*, 482 U.S. at 43. This approach, which is primarily factual in nature, is based upon the totality of the circumstances of a given situation and requires that the Board focus on whether the new company has taken over substantial assets of the predecessor and "'continued, without interruption or substantial change, the predecessor's business operations.'" Id., quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973):

> Under this approach, the Board examines a number of factors: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and basically has the same body of customers.

Fall River Dyeing, 482 U.S. at 43.

In considering substantial continuity, "[t]he employing enterprises are not the overall companies involved, but the . . . facilities whose employees were taken over by Respondent." *Southern Power Co.*, 353 NLRB 1085 (2009), adopted, 356 NLRB 201 (2010), enfd. 664 F.3d 946 (D.C. Cir. 2012). "Continuity of the employing industry requires consideration of the *work done*." *Saks Fifth Avenue*, 247 NLRB 1047, 1050–1051 (1980). Importantly, the question of the substantial continuity of the enterprises is to be analyzed primarily from the "employees' perspective." *Fall River Dyeing,* 482 U.S. at 43. In its analysis, the Board is mindful of whether "those employees who have been retained will understandably view their job situations as essentially unaltered." Id. (internal quotation omitted); *Vermont Foundry Co.*, 292 NLRB 1003, 1008 (1989); *Derby Refining Co.*, 292 NLRB 1015 (1989), enfd. 915 F.2d 1448 (10th Cir. 1990).

"The key test in determining whether a change in the employing industry has occurred is whether it may reasonably be assumed that, as a result of transitional changes, the employees' desires concerning unionization have likely changed"), enfd. in relevant part, 634 F.2d 681 (2d Cir. 1980); *Jeffries Lithograph Co.*, 265 NLRB 1499, 1504 (1982), enfd. 752 F.2d 459 (9th Cir. 1985).

Here, the continuity between Ford's DTF maintenance support and Jacobs' maintenance support at DTF is more than substantial. Clearly, with regard to maintenance at the DTF, on April 24, 2017, Ford assumed and "'continued, without interruption or substantial change, the predecessor's business operations'" (*Fall River Dyeing,* supra, quoting *Golden State Bottling Co.*, supra) providing the skilled and general maintenance to the DTF facility.

Three of the four former Jacobs employees who were rehired by Ford testified, and they each testified credibly that nothing of significance had changed in their work once they transitioned to become Ford employees. Without any hiatus, they went from Jacobs to Ford and continued reporting to the same facility, performing the same work, with the same duties, using the same tools, in the same location, relying on the same work systems. Their immediate supervision remained the same—indeed, the front-line supervision remained the Jacobs Engineering supervisors—a circumstance specifically negotiated for by Ford and the UAW in the Launch Agreement ("Purchased service salaried staff will continue to perform their current work and provide direction to the UAW Skilled Trade employees"). The customer remained the same and the employer performing the wind testing remained the same. As of the time of the hearing in this case—more than six months after the commencement of normal operations under Ford—not a single additional employee had bumped in, been transferred in, or otherwise regularly assigned as an ongoing DTF skilled maintenance employee.

Notably—and it imbues the arguments of Ford and UAW with a measure of audacity—the continuance of the Jacobs-era working conditions was part of the negotiated "launch agreement" between Ford and the UAW. It was a demand by Ford acceded to by the UAW. As the employees had it explained to them—Ford was putting a "fence" around the DTF for purposes of working conditions, with the result that Ford supervisors were instructing their DTF maintenance employees that it was going to be "business as usual" for now, and for up to a year—and perhaps longer. In other words, Ford consciously and purposely chose to maintain "business as usual" at the DTF thus prohibiting the integration of the DTF into the wider R&E/UAW system.

In terms of real changes for employees at the DTF—not future changes hoped for or anticipated by the UAW—the arguments of Ford and the UAW against successorship rely on the overstating of modest or immaterial changes in the worklife of employees or in the production processes. Thus, while with Ford the employees endured wage, pension, and seniority changes, the right to set initial terms and conditions of employment is one that the Supreme Court has protected for successors—but doing so does not undermine a finding of successorship. *Burns*, supra at 282-285 & 280 fn. 4. The UAW denominates as "dramatic" the fact since the transition some—estimated by Vergari to be approximately 12—outside Local 245 tradesmen have worked on an unspecified portion of the work that Jacobs had typically brought in outside contractors to perform. But not only is the amount of the work performed in this manner unspecified in the record, from the perspective of the assigned DTF employees it is not different than outside contractors coming into the DTF to perform projects. Ford may find it easier and more efficient to use non-DTF assigned employees for projects in DTF but it does not alter the working life of the DTF-assigned employees, or provide them with interchange that comes even close to altering their worklife in a manner that is reasonably likely to change their views on union representation, much less merge their identify with Local 245 tradespersons from outside the DTF.

Similarly, while the electrician Kurzawa agreed that under Ford he focuses more exclusively on his electrical work and no longer needs to cover operating engineer shifts, the evidence is that this is because he is no longer covering weekend overtime shifts for engineers. Jacobs had terminated the evening shift operating engineer for cause in late 2016 leaving the complement of engineers reduced by one. Ford remedied this by hiring an additional SSE and thus, returning staffing to the normal complement, with an SSE on duty in the evening shift. Reasonably, this also meant less need for Kurzawa to cover engineer work on weekends. However, since Ford took over, everyone at the DTF is performing additional overtime. The demand for overtime is high and this provides work directly in the employees' skills. None of this is change that undermines a finding of successorship. Indeed, the continued community-of-interest of the six maintenance employees assigned to the DTF is readily and obviously distinguishable from any separate community of interest shared by mobile Local 245 tradesman who travel throughout the R&E center's 58 buildings and only occasionally come into the DTF to perform specific assignments.

Many of the anti-successorship arguments advanced by Ford and the UAW involve claims that the DTF unit is no longer appropriate and that the only appropriate unit is one composed of all 58 buildings composing the R&E Center including the DTF. These arguments do not add up to much, and some cut against the UAW/Ford position.

This is particularly true given the legal backdrop for these arguments. The DTF unit has years of bargaining history. The Board's longstanding policy is that a "mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007). A party challenging a historical unit bears the burden of showing that the unit is no longer appropriate. Id. The evidentiary burden for such a showing is heavy. Id. Indeed, where there is a history of meaningful bargaining, "this fact alone suggests the appropriateness of a separate bargaining unit" and "compelling circumstances are required to overcome the significance of bargaining history." *Children's Hospital of San Francisco*, 312 NLRB 920, 929 (1993) (internal quotations omitted), enfd. 87 F.3d 304 (9th Cir. 1996). Longstanding Board precedent requires that "[u]nits with extensive bargaining history remain intact unless repugnant to Board policy or interfere with the rights guaranteed by the Act." *SFX Target Center Area Management, LLC*, 342 NLRB 725, 734 (2004), quoting *P.J. Dick Contracting*, 290 NLRB 150, 151 (1988) (footnote omitted); *The Great Atlantic & Pacific Tea Co.*, 153 NLRB 1549, 1550 (1965) ("the Board has long held that it will not disturb an established bargaining relationship unless required to do so by the dictates of the Act or other compelling circumstances").[13]

Moreover, the UAW and Ford's position that the DTF unit is inappropriate--and that the only appropriate unit is a unit covering 58 buildings from Dearborn Heights to Melvindale, to Allen Park–also faces the Board's "long recognized [ ] presumption that a single plant or store unit is appropriate for purposes of collective bargaining unless it has been so effectively merged into a comprehensive unit, or is so functionally integrated, that it has lost its separate identify." *Dean Transportation, Inc.*, 350 NLRB 48, 58 (2007), enfd. 551 F.3d 1055 (D.C. Cir. 2009). "The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness." *Trane*, 339 NLRB 866, 867 (2003).

[13]I note that the UAW's contention (I. Br. at 57) that the two Ford employees who transferred into the DTF bargaining unit "have their *own* bargaining history as part of Local 245" (original emphasis) misconceives the relevant inquiry.

There is little to nothing that has changed—as of the date of the hearing, much less at the time Ford began normal maintenance operations at DTF in April 2017—that would overcome the weight attached to the fact that this essentially unchanged unit has a long history of collective-bargaining as a standalone unit.

Thus, the UAW stresses that Ford's labor relations involves hiring and firing by centralized managers who supervise employees beyond the DTF, involve themselves in the grievance procedure, and make all staffing and personnel decisions. But the fact remains that the onsite supervisory authority that the DTF employees routinely deal with—and who, by Ford's agreement they are to look to for assistance and direction—is virtually unchanged.

Similarly, the UAW argues that the DTF is "geographically proximate" to the other R&E facilities—by which it means that the DTF is near two or three of the 58 buildings in the UAW's argued-for unit that otherwise are within a four-mile radius stretching across multiple suburban Detroit communities within which the various R&E buildings are located. The proximity pales—indeed, it illustrates the inappropriateness of relying on it—compared to the case the UAW relies upon, *Jerry's Chevrolet*, 344 NLRB 689, 691 (2005), where a "salient" factor in rebutting the single-site presumption was the contiguousness of three of the four sites at issue—with "no fences or barriers" separating them, with the fourth site directly across the road. *That* kind of proximity helps rebut a single site presumption, at least in the context of an initial representation unit determination. But a proposed multi-facility unit with most locations down the highway in neighboring cities is ineffective to rebut the single-site presumption, especially here, given the weight is to be accorded the historically-recognized unit.

The UAW also argues that Local 245 engineers and electricians working throughout the R&E center have the same licenses and skills as those working in the DTF. This may be, but the record evidence is clear that Ford negotiated with the UAW to prohibit outside UAW Local 245 members from even filling in for overtime in the DTF unless and until they went through "training" or "systems familiarity" at the DTF. This training did not begin until early August and by the time of the hearing in November, at most 23 members out of 526 had gone through it. None have bumped into or been assigned to the DTF. This was a choice that Ford made. Indeed, Ford and the UAW agree that Ford has the discretion to assign whom it wants to the DTF. Ford chose to hire Jacobs employees because, it told the UAW, it "would feel more comfortable" with the former Jacobs employees. Ford negotiated to preclude outside Local 245 employees from bumping into the DTF unless they received training. What this shows is that DTF remained a distinctive unit, set apart by work skills and ability. This remained the case as of the time of the hearing.

Ford and the UAW also argue that the bargaining unit proposed by the General Counsel is "fictitious" and "gerrymandered" because additional trades beyond electricians and steam engineers will periodically be relied upon—either through use of outside contractors or outside Local 245 workers, or salaried employees—to perform work in the DTF. This argument misses the point. The historic bargaining unit that the IUOE seeks to continue to represent always relied upon outside workers and salaried employees to complete work at the facility. This did not invalidate the appropriateness of the unit under Jacobs and it does not invalidate the continued appropriateness of the unit. The key point is that Ford chose to replicate and continue this arrangement when it assumed control of the DTF maintenance operations—since its inception only six employees have been assigned to regularly work at the DTF. Salaried employees for Jacobs continued to assist (as expressly provided for by Ford and the UAW in the launch agreement) and Ford continues to use—to a vaguely documented degree—outside employees (contractors and now Ford Local 245 workers) to complete specific tasks within the DTF. None of this undermines the appropriateness of the historic DTF bargaining unit. To the contrary, the

similarity of the continued use of salaried and outside labor only underscores the continued appropriateness of the unit from the perspective of the employees.

Finally, in terms of the continued appropriateness of the DTF unit, the UAW (I. Br. at 39–40) seizes on the difference in wording between the unit recognition requested in the IUOE Local 324 recognition demand letter, and the General Counsel's alleged unit description, to assert that the IUOE's demand includes outside mobile employees sent in to the DTF sporadically to perform maintenance, while the General Counsel "gerrymand[ered]" unit "artificially restricts[s] the size of the unit only to the six employees regularly staffed at the DTF." The UAW also suggests that the General Counsel's asserted unit is inappropriate to the extent it is different from that contained in the IUOE's recognition demand.

This is all make-weight. The General Counsel is reasserting the historically-recognized bargaining unit. To the extent the IUOE sought to expand the bargaining unit to cover historically-represented UAW work—and, in truth, that is not a reasonable construction of the IUOE's recognition demand—the IUOE would run into the same set of difficulties encountered by the UAW in trying to upset the continued appropriateness of the historic unit. In any event, the suggestion that the IUOE's demand was deficient or that the General Counsel is restricted from seeking a unit that varies from the union's demand is exactly wrong. As the Board has explained:

> Without regard to what the Respondent argues the demand meant, or what unit the Union intended to describe, it is settled Board precedent that in a successorship situation the union's bargaining demand need not be made with precision. It is the obligation of the Respondent to respond to the Union's demand and seek clarification. A vague, ambiguous, or erroneous unit description in the bargaining demand does not relieve the Respondent of its duty to bargain.
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> As the Supreme Court has recognized, the rationale for extending the union's presumption of majority support to the successorship situation "is particularly pertinent" because
>
> > [d]uring a transition between employers, a union is in a peculiarly vulnerable position. It has no formal and established bargaining relationship with the new employer, is uncertain about the new employer's plans, and cannot be sure if or when the new employer must bargain with it. . . . Accordingly, during this unsettling transition period, the union needs the presumptions of majority status to which it is entitled to safeguard its members' rights and to develop a relationship with the successor.
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> *Fall River Dyeing*, supra at 39.
>
> In light of this, the Board has rejected any suggestion, such as that of the Respondent here, that would make the union's bargaining rights—and the successor's legal obligation to bargain—turn on whether the union understood the precise contours of the successor's new operation or the wording to use in demanding bargaining.

A.J. Myers, and Sons, Inc., 362 NLRB No. 51, slip op. at 12 (2015) (and cases cited therein).

It is the job of the General Counsel to allege an appropriate unit for recognition in a successorship case. It is no defense—for the employer or a rival union—to argue that the charging party union's bargaining demand, made in real-time without the benefit of the General Counsel's investigatory powers, was inaccurate.[14]

In sum, in terms of the operations of the DTF at the time that Ford commenced operations on April 24, through the date of the hearing in November, there is no serious case to be made that there is not substantial continuity between the DTF maintenance operation under Jacobs and under Ford. The DTF unit remains an appropriate one, as it has been for many years.

The real thrust of Ford and the UAW's argument is not the present inappropriateness of the DTF unit, but their claim that they have a plan to integrate the DTF with the larger R&E operations. Ford and the UAW suggest that once this occurs, the DTF will lose any distinctiveness and will be inappropriate as a stand-alone bargaining unit, and that at that point only the UAW R&E-wide unit will be appropriate at that time.

This argument is meritless. First, it is speculative and self-serving. As is obvious from the October 22, 2015 letter agreement between Ford and the UAW, and from the terms of the Launch Agreement, there is no concrete plan to merge the DTF into a wider unit. That may be desired by the UAW, but Ford has not agreed to it. Six months into normal operations—as of November 2017—the same six DTF employees remain the only ones assigned to work there. This is despite the fact that Ford asserts that it has discretion to assign whom it wants to work at the DTF. There has been no bumping, the training of up to 23 outside Local 245 trades employees at DTF has not resulted in any personnel changes, and operations continue as described above.

Moreover, Ford and the UAW miscomprehend the essence of successorship with their argument that the substantial continuity of the enterprises is undermined by the claims that employees eventually could be bumped from the DTF or that DTF staffing might ultimately be increased to ten.

The point of the successorship doctrine is that employees' representational rights do not get put on hold—much less substituted with a union of Ford's choice—while Ford spends months (six and counting as of the time of the hearing) training additional employees and deciding whether and how it wants to modify the launch understandings. The argument is particularly a non-starter here, in a case where Ford bargained with the UAW to ensure that DTF operations would be "business as usual." This is exactly the opposite of what Ford and the UAW must show if they are to overcome the single-facility and the historic unit presumptions and show that the

[14]The UAW cites *R&M Electric Supply Co.*, 200 NLRB 603 (1972) for the proposition that a demand for recognition in a unit in which the union does not have a majority "cannot be based upon an ex post facto finding of majority in an appropriate unit for which bargaining had not been requested." However, this ruling of the ALJ in *R&M Electric* was not reached by the Board and therefore is of no precedential value. Just as significantly, the case is totally inapposite, as it considers a union's demand for initial recognition and bargaining based on a card majority, which the Board has recognized to be a "wholly different context" from the successorship situation on exactly the grounds that a bargaining demand in a successorship situation does not require the accuracy or precision of that required in the initial representation context. *A.J. Myers*, supra, citing and quoting *Hydrolines, Inc.*, 305 NLRB 416, 420 (1991); *Specialty Hospital*, 357 NLRB at 830–831 (in successorship situation, a union has "leeway as to the specificity of its bargaining demand pertaining to the bargaining unit to a successor because of the vagaries inherent in the change of the operation as to [the] ultimate unit where [a] bargaining obligation inures to the union").

historic DTF stand-alone unit has lost its separate identify under Ford. Indeed, it is a textbook example of the essence of successorship: a "conscious decision to maintain generally the same business and hire a majority of its employees from the predecessor" in order "to take advantage of the trained work force of its predecessor." *Fall River Dyeing*, 482 U.S. at 41.

Ford and the UAW also argue that application of accretion principles justify Ford's recognition of the UAW as the representative of the DTF maintenance employees. However, the Board finds accretion "only where the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." *E. I. Du Pont, Inc.*, 341 NLRB 607, 608 (2004), quoting *Ready Mix USA, Inc.*, 340 NLRB 946, 954 (2003). Thus, in this case, the successorship analysis finding that the historic DTF unit remains appropriate, leaves no room for a viable claim that the DTF unit has been accreted into a larger R&E Center unit.[15]

Finally, I note the UAW's extensively argued (I. Br. 28–37) contention that its right to represent the DTF maintenance employees is "lawfully guaranteed" based on its labor agreement with Ford. The nub of the UAW's argument is its claim that it agreed with Ford that it would get to represent any new facilities Ford added to or near the R&E Center and that that resolves this case, without regard to accretion, appropriate units, or anything else. Quite apart from the fact that, with regard to the DTF, neither Ford nor the UAW acted as if the UAW's rights were so settled, and quite apart from the fact that the UAW-Ford labor agreement does not purport to automatically include newly acquired units in the bargaining unit,[16] this asserted advance agreement to impose the UAW on the employees of newly acquired facilities warrants no deference here. It is an argument without basis in federal labor law. It jettisons the Act's interest in employee free choice, an interest that has been carefully placed in the balance in the development of the Board's successorship and accretion doctrines.

In support of its claim, the UAW cites cases such as *Tarmac America, Inc.*, 342 NLRB 1049 (2004), and *Gourmet Award* Foods, 336 NLRB 872 (2001), where the particular work—not just the same skills set or type of work—was *already* part of the historical bargaining unit. Thus, in *Tarmac America*, supra, the employer permanently assigned a fork-lift operator to work at a facility already part of the recognized bargaining unit, in a unit that already covered all fork-lift operators. In that circumstance, the Board held that the new fork-lift operator's position was included in the existing bargaining unit. In *Gourmet Award Foods*, supra, the Board found that temporary employees working in the employer's union-represented facility were included in the established and recognized unit described in the contract. *Gourmet Award* and *Tarmac America*

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[15]I note that an accretion claim must be determined on the facts that existed on the date of the recognition of the union, in this case, as of April 24, 2017. *American Medical Response, Inc.*, 335 NLRB 1176, 1178 (2001).

[16]The labor agreement provides (I. Exh. 15(a), article 1) that the Union is the exclusive collective-bargaining representative of

> the units of employees at each at each Company location which were actually covered by the last preceding Agreement between the parties as of the expiration date thereof, except for such changes as may be required as a result of pending actions before the NLRB . . .

Thus, both the fact of the DTF's non-inclusion in the established bargaining unit and the primacy of any NLRB determination are plain.

are not cases where, as here, a union rests its claim to represent a new group of employees on the claim that newly acquired facilities automatically are added to the bargaining unit.

Moreover, and obviously, the DTF maintenance work at issue was historically performed by IUOE employees working in a DTF-only unit. Thus, the UAW's reliance on cases such as *In re Premcor*, 333 NLRB 1365 (2001), and *The Sun*, 329 NLRB 854 (1999), is fundamentally misplaced. Those cases involve situations where work that has historically been part of a unit was *transferred* and *removed* from the unit and assigned to a newly created job classification (and in *In re Premcor* to a new location). In such instances, the Board rejects the view that it is necessary to find that the transferred/removed work is an accretion to the unit. Rather, the transferred/removed work, even if placed in a newly created classification, remains part of the historic bargaining unit work. These cases add exactly nothing to the UAW's case here. The Ford DTF maintenance employees are not performing work that was transferred or removed from the preexisting UAW-represented bargaining unit. The UAW's suggestion that a newly hired Ford employee in a newly acquired location, who performs the same *type* of work as a UAW-represented employee, necessarily becomes a member of the preexisting UAW-represented bargaining unit, without even the need to satisfy an accretion analysis, is an argument invented out of whole cloth.

In short, based on settled Board precedent, the record overwhelmingly supports the conclusion that Ford is a successor to Jacobs and that the long-recognized stand-alone DTF maintenance unit remains an appropriate unit for bargaining.

Ford's duty to bargain: The majority of Ford's DTF employees were from the Jacobs' maintenance employee bargaining unit

Having found that Ford was a successor to Jacobs, I must consider if and when Ford's bargaining obligation to the IUEO Local 324 attached.

The successor's bargaining obligation chiefly turns on whether the predecessor's employees form a majority of its work force. *Vermont Foundry*, 292 NLRB 1003, 1009 (1989). "As a general rule, the relevant measuring day to determine if the Company employed a majority of union members is the initial date it began operating." Id. That was the case in *Burns*, where the successor began operating the day after the predecessor ceased operations with a majority of its employees drawn from the predecessor's work force. *Burns*, supra.

In *Fall River Dyeing,* supra, the Supreme Court considered a case of a successor that took over a facility and began operations after several months hiatus in operations. The new employer started up operations and hired employees gradually over time. Explicitly contrasting the situation to that in Burns, the Court in *Fall River Dyeing* pointed out that

> [i]n other situations, as in the present case, there is a start-up period by the new employer while it gradually builds its operations and hires employees. In these situations, the Board, with the approval of the Courts of Appeals, has adopted the "substantial and representative complement" rule for fixing the moment when the determination as to the composition of the successor's work force is to be made. If, at this particular moment, a majority of the successor's employees had been employed by its predecessor, then the successor has an obligation to bargain with the union that represented these employees.

482 U.S. at 47 (footnotes omitted).

In the context of a start-up, the Supreme Court in *Fall River* approved as reasonable the Board's substantial and representative complement rule, which evaluates the successor's bargaining obligation at the time that a substantial and representative complement of employees is hired. As the Supreme Court explained,

> "[the substantial and representative complement] rule represents an effort to balance the objective of insuring maximum employee participation in the selection of a bargaining agent against the goal of permitting employees to be represented as quickly as possible. . . . The latter interest is especially heightened in a situation where many of the successor's employees, who were formerly represented by a union, find themselves after the employer transition in essentially the same enterprise, but without their bargaining representative."

Fall River Dyeing, 482 U.S. at 48–49 (internal quotation marks omitted).

In *Fall River* the Supreme Court explicitly rejected the employer's contention that the bargaining obligation cannot be assessed until an employer has hired its full complement of employees. The Court concluded that the "full complement" argument "must fail." *Fall River Dyeing*, 482 U.S. at 50.

Here, Ford commenced normal operations of the DTF maintenance operations on April 24, 2017, with six employees assigned to DTF, four of whom previously worked in the Jacobs' maintenance operation. This was the full complement which Jacobs used—actually one more than Jacobs used since letting an employee go for cause early in the year. Ford's duty to recognize and bargain with the IUOE Local 324 attached on April 24. Ford violated the Act when it refused to recognize and bargain with the IUOE on April 24.[17]

Ford and the UAW resist this conclusion on several grounds, but none is compelling. First, they argue (R. Br. at 9-10; I. Br. at 39), in what is simply a continued insistence on the inappropriateness of the DTF single-site unit, that the unit consists of "all 526 skilled tradespersons" of Local 245 who could potentially be assigned by Ford to the DTF, "or at least the 40-45% of those tradespersons who are mobile and therefore most likely to be ordered to respond to work orders at the DTF," or "[a]t the very least, the unit consists of 16 and 17 employees . . . represent[ing] the six employees stationed at the DTF plus the estimated combined 10.6 additional full-time employees worth of maintenance work" that represent Ford's calculation of the amount of additional work that is necessary to fully account for all the work done at DTF. (I. Br. at 39).

These sort of arguments miss the point, discussed above, that the outside contractors did not constitute members of the historic DTF bargaining unit just as now the outside Local 245 members who enter the DTF do not constitute members of the alleged and appropriate unit, and they do not undermine the continued appropriateness of the standalone unit composed of the employees permanently assigned to work at the DTF.

[17]The Board treats IUOE's April 13, 2017 bargaining demand as a continuing demand for recognition and bargaining. See, *Fall River Dyeing,* 482 U.S. at 52–53.

Ford (Resp. Br. at 10) and the UAW (I. Br. at 50–51) also contend that the six employees assigned by Ford to the DTF maintenance unit on April 24, 2017, and at all times thereafter until the close of the hearing, do not constitute a substantial and representative complement, sufficient under *Fall River Dyeing* to assess the composition of the work force.[18]

Ford and the UAW are in error, even assuming, for the moment, that it is true that Ford will soon have ten people assigned to DTF maintenance.

Even assuming, arguendo, that the full complement of DTF employees will be ten, the six employees who began normal operations on April 24, 2017, clearly represent a substantial and representative complement. The six employees began full normal operations of the DTF maintenance and continued as the work force for many months, through the close of the hearing, working in the same classifications and performing the same work that the full Jacobs complement of maintenance unit employees had historically performed. The very point of the substantial and representative complement rule is that awaiting a full complement to measure a bargaining obligation "fails to take into account the significant interest of employees in being represented as soon as possible," an interest that is "especially heightened" in the successorship situation. *Fall River Dyeing,* 482 U.S. at 49–50.

Six of ten employees working the normal operations in even half the ultimate classifications is a substantial and representative complement. "In general, the Board finds an existing complement to be substantial and representative when approximately 30 percent of the eventual employee complement is employed in 50 percent of the job classifications." *Shares, Inc.*, 343 NLRB 455, 455 fn. 2 (2004), enfd. 443 F.3d 939 (7th Cir. 2006); *NLRB v. Asbury Graphite Mills, Inc.*, 832 F.2d 40, 43 (3rd Cir. 1987) (33% of "contemplated" total was a substantial and representative complement), enforcing *Asbury Graphite Mills, Inc.*, 282 NLRB 448 (1986); *Gerlach Meat Co.*, 192 NLRB 559 (1971) (35%). See also, *General Cable Corp.*, 173 NLRB 251 (1968) (31%). Moreover, while Ford's claim that it ultimately intended to assign plumbers and millwrights to the DTF maintenance is far too uncertain to rely upon—according to

[18]Although garbed as a claim that there is not yet a substantial and representative complement, their argument rests on precisely the claim the *Fall River* majority held "must fail"—the claim that the date for measuring the composition of the employee complement should be postponed until a full complement is hired. As the UAW puts it:

> the full complement will consist of a majority (six out of ten) tradepersons who have long been represented by the UAW Local 245. Under these circumstances, the initial six employees should not be treated as a representative complement when they plainly do not represent the predictable majority view of the eventual full complement. [I. Br. at 51.]

Ford argues:

> it is clear from the record that a substantial and representative complement of electricians and SSE's were not present as of the transition from Ford to Jacobs. It is undisputed that but for the use of salaried personnel and contractors, even an artificial single site DTF unit of just SSE's and electricians would have constituted at least 10 stationary employees at DTF and there will be 10 such employees by the end of 2017. [R. Br. at 10.]

Vergari as of November 2017, it had not been determined if there was enough work to permanently station a millwright or a plumber at the DTF—the April 24 complement of electricians and steam engineers meets the 50% of full classification threshold, even though, in fact, the Board does not necessarily require even a majority of the anticipated job classifications be filled in order to find a substantial and representative complement. *Endicott Johnson*, 172 NLRB 1676 (1968) (substantial and representative complement with less than 50% of ultimate classifications filled).

Finally, I note that the UAW contends (I. Br. at 43) that "only the barest possible majority" of Jacobs employees constitute the proposed unit—four of six—and that this "informs" the successorship analysis. It does, but in favor of successorship, as it is more than the majority required under *Burns* for a finding of successorship. The UAW laments that if Ford initially had transferred in only one more Local 245 member and hired one less Jacobs employee, former Jacobs employees would compose a bare 50 percent of the unit. But the salient point is that Ford voluntarily chose, for its own benefit, to hire a majority of the unit from the Jacobs' employees. Ford said it felt "more comfortable" that way. Thus, Ford chose the bargaining obligation. *Fall River Dyeing,* 482 U.S. at 40–41 ("the successor is under no obligation to hire the employees of its predecessor" and "[t]hus, to a substantial extent the applicability of *Burns* rests in the hands of the successor. . . . This makes sense when one considers that the employer intends to take advantage of the trained work force of its predecessor").

I find that there was—at a minimum—a substantial and representative complement of DTF employees working on April 24, 2017. Ford's refusal to recognize and bargain with the IUOE Local 324 violated the Act as of that date.

II. The alleged 8(a)(5) violation against Ford for recognizing the UAW

In addition to alleging that Ford violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the IUOE Local 324 as the DTF maintenance employees' collective-bargaining representative, the complaint also independently alleges that Ford violated Section 8(a)(5) and (1) by recognizing and entering into a collective-bargaining agreement with the UAW and its Local 245 for the DTF maintenance employees.[19]

While I agree that Ford's recognition and collective-bargaining relationship with the UAW regarding the DTF employees was inappropriate, I am unaware of any precedent supporting the conclusion that it is a violation of Section 8(a)(5) for Ford to do so. Neither precedent nor argument for the claim is offered, by either the General Counsel or the Charging Party. Neither

[19]Paragraph 11 of the complaint alleges that:

> About April 24, 2017, Respondent granted recognition to, and entered into and since then has maintained and enforced a collective-bargaining agreement with the [Intervenor] as the exclusive collective-bargaining representative of the Unit.

Paragraph 15 of the complaint alleges that:

> By the conduct described above in paragraph 11 . . . Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

the Respondent nor the Intervenor address the issue. The terms of the complaint make clear that the 8(a)(5) allegation was not a typographical error.

More typically the actions here would be found to constitute a violation of 8(a)(2) and an independent 8(a)(1) violation regardless of the good faith of the employer. See, *ILGWU v. NLRB (Bernard-Altmann Texas Corp.)*, 366 U.S. 731 (1961). Neither an 8(a)(2) nor an independent violation of 8(a)(1) is mention in the complaint or in the parties' briefs. (Similarly, no contention is made that the UAW violated Section 8(b)(1)(A) by accepting recognition in the DTF maintenance unit. *Bernard-Altmann*, supra.)

I dismiss the allegation that the recognition of the UAW and application of the Ford-UAW was an 8(a)(5) violation. Given the complaint, and the lack of allegation or argument on the issue, I do not find that the recognition of the UAW was an 8(a)(2) or independent 8(a)(1) violation.[20]

CONCLUSIONS OF LAW

1. The Respondent Ford Motor Co. is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party Local 324, International Union of Operating Engineers (IUOE), AFL–CIO (Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Respondent constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time operating engineers and electricians employed by the Respondent at the Drivability Test Facility (DTF) located at 8000 Enterprise Drive, Allen Park, Michigan, engaged in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF, and in the performance of general building maintenance.

4. Since on or about April 24, 2017, the Charging Party Union has been the exclusive collective-bargaining representative of the Respondent's employees in the above-described unit.

5. Since on or about April 24, 2017, the Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain collectively with the Charging Party Union as the exclusive collective-bargaining representative of the Respondent's employees in the above-described unit.

6. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

[20]While I dismiss this allegation of the complaint, Ford's recognition of the UAW as the representative of the DTF maintenance employees will not be able to continue. Ford violated the Act by failing to recognize and bargain with the IUOE as the *exclusive* representative of the DTF maintenance employees. Recognition of another union was and will be inconsistent with Ford's obligations under the Act, as well as with its obligations under the order and remedy set forth below.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(5) and (1) of the act by failing and refusing to recognize and bargain collectively with the Charging Party Union as the collective-bargaining representative of an appropriate bargaining unit of employees, the Respondent shall recognize and, upon request, bargain with the Charging Party Union as the exclusive representative of the designated unit of employees (described above) and, if an understanding is reached, embody the understanding in a signed agreement.

The Respondent shall further be ordered to refrain from in any like or related manner abridging any of the rights guaranteed to employees by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Respondent's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 24, 2017. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 7 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

The Respondent, Ford Motor Company, Allen Park, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with Local 324, International Union of Operating Engineers (IUOE), AFL–CIO (Union) as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time operating engineers and electricians employed by the Respondent at the Drivability Test Facility (DTF) located at 8000 Enterprise Drive, Allen Park, Michigan, engaged in the

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF, and in the performance of general building maintenance.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize, and on request, bargain with the Union as the exclusive collective-bargaining representative of the above-described unit of employees concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its DTF facility in Allen Park, Michigan, copies of the attached notice marked "Appendix."[22] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 24, 2017.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 7 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. February 8, 2018

David I. Goldman
U.S. Administrative Law Judge

[22]If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with Local 324, International Union of Operating Engineers (IUOE), AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full -time and regular part-time operating engineers and electricians employed by the Respondent at the Drivability Test Facility (DTF) located at 8000 Enterprise Drive, Allen Park, Michigan, engaged in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF, and in the performance of general building maintenance.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL recognize and, on request, bargain with Local 324, International Union of Operating Engineers (IUOE), AFL–CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full -time and regular part-time operating engineers and electricians employed by the Respondent at the Drivability Test Facility (DTF) located at 8000 Enterprise Drive, Allen Park, Michigan, engaged in the operation, mechanical maintenance and repair of all refrigeration, heating and air-conditioning machinery installed at the DTF, and in the performance of general building maintenance.

FORD MOTOR COMPANY

(Employer)

Dated _____ By _____

(Representative)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2543

(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

Administrative Law Judge's decision can be found at www.nlrb.gov/case/07-CA-198075 by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (313) 335-8042.